

The Speaker laid the bill before the House.

The veto message of the Governor was then read, as follows:

Executive Office,
Austin, Texas, April 11, 1907.

To the Senate:

I herewith return, without my approval, Senate bill No. 6.

This bill has for its object the consolidation of the Gulf, Colorado & Santa Fe and the Texas & Gulf Railways, through a purchase or lease by the Gulf, Colorado & Santa Fe of the railroad and property of the Texas & Gulf Railroad and the merging of these two railroad properties by such lease or purchase. This bill as originally introduced in the Senate contemplated the consolidation of the Gulf, Colorado & Santa Fe Railroad, a line of railway extending from Galveston to Paris, Texas, with the Gulf & Interstate, a line extending from Bolivar Point, opposite Galveston, to Beaumont, and the Gulf, Beaumont & Great Northern Railway Company, a line of railway extending from Beaumont to Center in Shelby county, and the Texas & Gulf Railway Company, extending from Waterman in Shelby county, to Longview in Gregg county, and which, by the contemplated construction of a connecting link between the Gulf, Beaumont & Great Northern and the Texas & Gulf in Shelby county, and the required extension north from Longview Junction to Paris, to what we can reasonably assume to be a connection there with the Gulf, Colorado & Santa Fe, and also the notice given as required by the Constitution, discloses the fixed and ultimate purpose of the promoters of this proposition to consolidate the four lines proposed from Paris via Longview and Beaumont, to Galveston, by sale or lease, with the Gulf, Colorado & Santa Fe Railway Company, a line already extending from Paris to Galveston and this bill is the first step in that unlawful purpose.

It is a matter of common knowledge that all the stock and bonds of the Gulf, Colorado & Santa Fe Railroad Company are owned by the Atchison, Topeka & Santa Fe Railroad Company, a foreign corporation, and it is equally well known that said foreign corporation has purchased and now operates and controls, in violation of the Constitution of Texas, the lines of railroad of the Gulf & Interstate, the Gulf, Beaumont &

Great Northern and the Texas & Gulf Railroads, the purchase of which last named railways was doubtless accomplished to cut off existing competition in Texas traffic, and prospective competition of traffic between North and Northwest Texas and the Gulf ports as a result of the extension of the Texas & Gulf into the territory already occupied by the Gulf, Colorado & Santa Fe at Paris and in that section tributary to the line if the same had been extended in accordance with the plans of the former owners of said Texas & Gulf Railroad. It is well known that the Gulf, Colorado & Santa Fe Railway Company is dominated and absolutely controlled by the Atchison, Topeka & Santa Fe Railway Company, and that its entire income has heretofore been absorbed and is now being absorbed by the holding company, the Atchison, Topeka & Santa Fe, and that its outstanding debts and obligations are increasing while its income is being diverted for the payment of dividends upon the stock of the Atchison, Topeka & Santa Fe Railway, and that the apparent purchase of these other lines by the Gulf, Colorado & Santa Fe, a company without money or other assets, is nothing more nor less than a clumsy evasion of that provision of our Constitution which prohibits the Atchison, Topeka & Santa Fe Railway Company from purchasing, leasing or operating, or controlling any Texas railroad.

The progress of this bill to final passage in the House of Representatives was characterized by certain proceedings which should condemn the measure and which makes its sanction by me utterly impossible. The people of this State have for their protection created the Railroad Commission and are seeking by that method to enforce a reasonable regulation of the railways of Texas, but at every step this agency employed by the people for their protection against extortion on the part of the railway companies has been embarrassed with Federal court injunctions and almost endless litigation. Every order of the Railroad Commission for the reduction of rates which is not acceptable to the railways has been attacked and too often enjoined in the Federal courts, and to the end that the Gulf, Colorado & Santa Fe Railroad Company be required to litigate with the Railroad Commission in the State courts and that relief from the embarrassment of the Federal courts interfer-

ence be had, the following amendment to the proposed bill was offered while the same was under consideration:

Amend Section 9 by adding thereto the following:

"But if said Gulf, Colorado & Santa Fe Railroad Company shall institute a suit in the Federal court to enjoin the enforcement of any such rule or regulation promulgated by such Railroad Commission of Texas, then the rights and privileges granted in this act shall be forfeited."

This reasonable condition proposed as a consideration for the extraordinary powers, rights and privileges proposed by this bill was promptly voted down, and the practice of the railways of evading their obligations to the people by refuge in the Federal courts and in the long delays incident to such procedure would by such proceeding incident to the passage of this act, be considered as having been approved by the Legislature of the State of Texas, and I am unwilling to acquiesce in such an interpretation of legislative action or intention.

And further, Section 6 of our State Constitution provides, "That no railroad company organized under the laws of this State shall consolidate by private or judicial sale, or otherwise, with any railroad company organized under the laws of any other State of the United States."

To the end that this provision of our Constitution should remain inviolate, the following amendment was offered to the bill:

Amend Section 1 by adding thereto the following:

"Provided, that the provisions of this act shall be null and void if the stock or any portion thereof of the Gulf, Colorado & Santa Fe Railway Company is now owned or may hereafter be owned by the Atchison, Topeka & Santa Fe Railroad Company, or any other foreign corporation, contrary to the Constitution and laws of this State."

It will be seen that this amendment only imposed upon the Gulf, Colorado & Santa Fe Railroad Company the reasonable condition that it obey the Constitution and laws of Texas, and that it shall take no rights under the provisions of this bill if such company was without that independent existence contemplated by the Constitution and laws of this State, and that it should not receive from the State for the benefit of a foreign corporation the valuable rights, privileges and advantages given by this act, if

operating in violation of the Constitution and laws of the State of Texas. The amendment was defeated, and the known violation of the Constitution by this railway corporation and the Atchison, Topeka & Santa Fe Company, whether intentionally or not, was approved, and their crimes against the Constitution will be accepted by them and the public as authorized and condoned.

I am persuaded that the full force and effect of the amendments above referred to and of the reasonable interpretation that could be placed upon the action of the Legislature in rejecting them was not a subject of appropriate consideration, otherwise they would have received more serious attention and better support. The wisdom of that provision of our Constitution prohibiting foreign railway corporations from owning and dominating the railroad companies incorporated under the laws of the State of Texas, has been amply demonstrated by the results of operation flowing from the ownership and domination of the Gulf, Colorado & Santa Fe by the Atchison, Topeka & Santa Fe Railway Company, which Texas company has been dominated and controlled for many years by the Atchison, Topeka & Santa Fe Company, through holding its stock in violation of said Section 6, Article 10 of the Constitution of Texas.

By this form of domination and control unusual burdens have been laid upon the Gulf, Colorado & Santa Fe, and upon Texas traffic, by the Atchison, Topeka & Santa Fe, resulting from the divisions of revenue and the distribution of expenses of operation, thereby reducing the income of the Gulf, Colorado & Santa Fe railway, which policy aids in the maintenance of higher freight and passenger rates. Again, this ownership of the stock and all of the bonds of the Gulf, Colorado & Santa Fe which are held in the treasury of the Atchison, Topeka & Santa Fe Railway Company, has enabled the Atchison, Topeka & Santa Fe to pledge the same as collateral security for bonds and stock issued by the Atchison, Topeka & Santa Fe Railway Company which are outstanding and have been sold to the public. In this way the increased millions of bonds and stock of the Atchison, Topeka and Santa Fe Railway have become a mortgage and a charge upon the traffic, the productive power and the enterprises of the people of Texas. They impoverish the Texas line, and the bleeding process is applied

in proportion to the gross income of the Gulf, Colorado & Santa Fe, and the people pay the freight. They have already gathered in this way, and are still gathering, many millions from the people through the illegal ownership of the stock of the Gulf, Colorado & Santa Fe, and they are seeking to gather in through this bill other lines of railway and other sections of this State, over which they now propose to spread their blighting debts, obligations and political influence.

The report of the Gulf, Colorado & Santa Fe Railway Company to the Railroad Commission for the year ending June 30, 1906, shows that the original funded debt of the railroad was \$21,310,000, consisting of \$12,696,600 of 7 per cent bonds and \$8,614,000 of 6 per cent bonds, from all of which the company realized by sale at discount \$20,335,771. This report includes certificates of indebtedness issued in 1904 and due in 1929, a sum aggregating \$17,858,924.70, a sum approximating and almost equal to the original cost of the Gulf, Colorado & Santa Fe property. This \$17,858,924.70 represents the interest coupons on the bonded debt above referred to, and which has accumulated during the period of ownership and control of the Gulf, Colorado & Santa Fe Railway Company by the Atchison, Topeka & Santa Fe Railway Company, a debt that has been incurred and which the people must pay through traffic charges, while the income of the Gulf, Colorado & Santa Fe Railway Company has been and is being diverted to the payment of dividends upon the vast capitalization and bonded debt of the Atchison Topeka & Santa Fe Railway Company, which amounts to \$491,694,330, as shown by that company's report for the year ending June 30, 1906. These last mentioned certificates of indebtedness have been issued since the stock and bond law went into effect and are bearing interest. These are held by the Atchison, Topeka & Santa Fe Railway Company, and it will be seen that the Atchison company is not satisfied to divert the legitimate income of the Gulf, Colorado & Santa Fe, but manipulates the divisions of revenue and expenses by which the Texas railroad received the smallest proportion of the earnings and the largest proportion of the expenses, and in addition to this diversion of the revenues to the payment of dividends on the mortgages and bonds of the Atchison, Topeka & Santa Fe Railway Company, the said holding company is compound-

ing the interest thereon. But for this illegal domination of the Gulf, Colorado & Santa Fe Railway Company its income could be applied to its debts and freight and passenger rates further reduced.

It is shown by the Interstate Commerce Commission's report on the statistics of railroads in the United States for 1905, on page 590, that the Atchison, Topeka & Santa Fe Railway Company paid on the lines south of Red river 4 per cent dividends, or \$576,252, on common stock and 5 per cent or \$806,638 on preferred stock, and paid \$1,358,013, or an average of 4 per cent, on the funded debt, which in the aggregate amounts to \$2,740,903 paid in dividends and interest on the lines owned by the company south of Red river, said lines being in Texas, which sum is equivalent to 4 per cent on over \$60,000,000 of stock and bonds, when in fact the funded debt and the stock outstanding against the railway properties dominated and controlled by the Atchison, Topeka & Santa Fe Railway Company is about \$40,000,000.

These bonds and this stock is owned by the Atchison, Topeka & Santa Fe, and it will be seen that they not only paid a sum equal to 4 per cent on the actual debt and stocks, but that said holding company paid to itself an excess of 4 per cent on about \$20,000,000, and in addition to the real outstanding debt and stock of the companies south of Red river.

From reliable data in my possession, which is based on data mentioned in the statistical report of the Interstate Commerce Commission for the year ending June 30, 1904, 4 per cent dividends were paid on common stock, amounting to \$577,476, being 4 per cent of a total of about \$14,436,900. Eight hundred and eight thousand three hundred and fifty-one dollars was paid in dividends on preferred stock on lines of railway dominated by the Atchison, Topeka & Santa Fe south of the Red river, which was equal to 5 per cent on a total value of \$16,167,020; they paid on funded debt on lines south of Red river, \$333,698, a sum equal to 4.03 per cent on \$33,094,244, making a total valuation of \$63,698,164, and the interest and stock dividends paid on same was equal to 4.11 per cent on the grand total.

The same data shows that the total amount of stock and bonds outstanding on all of the Atchison, Topeka & Santa Fe property in Texas, including the Cane Belt, Gulf, Beaumont & Great Northern, Gulf, Beaumont & Kansas City; Gulf,

Colorado & Santa Fe, Pecos & Northern Texas, and Pecos River & Southern Kansas Railway Companies, was \$41,629,900, interest on which at 4 per cent would be \$1,710,888, which, deducted from the total amounts paid in dividends and the interest on lines south of Red river, would leave \$1,008,637.

Thus it will be seen that the average interest and stock dividends for the year 1904 on these lines was 4.11 per cent and the average for the year ending June 30, 1905, as shown by the report of the Interstate Commerce Commission, is 4.27 per cent.

From these statistics and the data above referred to it is clear that the stocks which represent these Texas railroads under the control of the Atchison, Topeka & Santa Fe Railway are earning dividends, and that dividends have been paid and are being paid on the same to the Atchison, Topeka & Santa Fe Railway Company, and that through the manipulation incident to their unlawful holding and control of these companies the Gulf, Colorado & Santa Fe Railway has been defaulting in the interest due by it, and additional burdens are being laid upon Texas commerce and Texas traffic, and this bill has for its ultimate object the impoverishment of the heretofore prosperous and independent Texas & Gulf Railway Company and of the other three lines of railroad included in this bill as originally proposed. These properties, if left alone, would have gone forward in their independent construction and would have been a more fruitful source of development and convenience in that section of the State which gives promise of growing prosperity if not blighted by railroad consolidations so destructive of competition, and if not plundered by the never-satisfied greed of the railroad trust which is by combinations and consolidations imperiling free government in this country.

The capitalization and bonded indebtedness of the Gulf, Colorado & Santa Fe Railway, which includes the certificates of indebtedness hereinbefore referred to as a charge against the 1149.64 miles of main line in Texas and the Indian Territory, amounts to a total obligation of \$43,718,924.70, and although it has for years defaulted in its interest obligations, we have presented by this bill a clumsy sham of purchase by said company of another railroad and it is proposed by Section 2 to authorize this purchase, but to have the people pay the price. Said Section 2 provides that in addition to the stocks

and bonds heretofore issued by the Gulf, Colorado & Santa Fe Railway Company, it is empowered and authorized to issue its bonds and stocks, either or both, to make payment for said properties, said section provides further that the Railroad Commission shall require evidence that all bonds heretofore issued by the Texas & Gulf Railroad Company shall have been satisfied and canceled. The Texas & Gulf Railroad is 70.07 miles in length and is capitalized at \$1070 per mile at present, and this is the only obligation outstanding against this company in stock and bonds. This section of the bill probably involves the cancellation of \$75,000 in stock which is held by the Atchison, Topeka & Santa Fe and to substitute in its place at the very outset a million dollars in stocks and bonds, either or both, which shall be used in the payment of the purchase of said properties.

These bonds, the traffic and commerce of Texas must pay, and when the people have paid for the railroad it goes up to Atchison, Topeka & Santa Fe Railway Company, a foreign corporation, without cost, and where it is free of bonded debt now and will bear lower freight rates than when covered with a mortgage debt, the proposed bonds could be used as a basis for injunctions to annoy and embarrass the Railroad Commission when seeking to give the people relief against the unjust rates now applying on local traffic in Texas and herein may be found the underlying causes for the action of large railway systems in gathering up and stifling by the bonding process the independent lines not theretofore burdened with over-capitalization and bonded debts. These heavily bonded debts placed thereon by the purchasing company and often owned by the great railway systems themselves are always employed to justify exorbitant freight and passenger tariffs and to prevent the application of reasonable freight and passenger rates. Any effort to issue stock or lay bonds on the Texas & Gulf Railway Company as proposed by Section 2 of this bill, or the purchase of said road already owned by the Atchison Company by the issuance of stock or bonds, is a subterfuge and a clear violation of Section 6, Article 12, of the Constitution of the State of Texas, which reads as follows:

"No corporation shall issue stock or bonds except for money paid, labor done, or property actually received, and all fictitious increase of stock or in-

debtedness shall be void."

The Texas & Gulf Railroad, as an independent line, practically paid for itself, there being only \$75,000 stock outstanding, which was held by its former owners, and as shown by the eleventh annual report of the Atchison, Topeka & Santa Fe Railroad Company, which report is made for the year ending June 30, 1906, the Texas & Gulf Railroad was sold to said foreign corporation for \$1,000,000. During practically the same period of successful operation, on the part of the Texas & Gulf Railroad, by which it almost built and paid for itself, the Gulf, Colorado & Santa Fe Railway Company had defaulted in its obligations to the extent of \$17,858,924.70, and as has been shown while the Texas & Gulf Railroad Company had practically paid for itself within a few years, the Gulf, Colorado & Santa Fe, which, under this proposed sham sale and consolidation, proposes to buy the Texas & Gulf Railway, has already defaulted in its interest in an aggregate sum almost equal to the cost of the road.

Section 5 of Article 10 of the Constitution of the State of Texas, reads as follows:

"No railroad or other corporation or the lessee, purchaser or manager of any railroad corporation shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control a parallel or competing line, nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line."

That this bill as originally introduced, contemplated a line from Galveston via Beaumont and Longview to the city of Paris, which would not only parallel but constitute an active competitor with the Gulf, Colorado & Santa Fe, admits of no question, and that the Texas & Gulf from Longview, taken in connection with the Houston East & West Texas Railway at Timponson is a competing line with the Gulf, Colorado & Santa Fe, is equally clear. If these lines are either parallel or competing then the bill is unconstitutional and it is my plain duty to disapprove the same. That they are both parallel and competing lines can not be successfully controverted. It is true that the Texas & Gulf Railway Company and the Gulf, Colorado & Santa Fe Railroad Company do not in fact connect directly with each other, but in the case of East Line &

Red River Railroad Company vs. the State, 75 Texas Supreme Court Reports, page 434, in a parallel case, the trial court used the following language in the findings of fact:

"Disregarding their connection with other railroads and lines of transportation, the East Line & Red River and the Missouri, Kansas & Texas Railroads were not competing roads when said sale was made. Considered with reference to such connections they were competing roads," and upon these findings of fact the trial court held that the consolidation of the East Line & Red River and the Missouri, Kansas & Texas Railroads was a violation of the Constitution and rendered a judgment forfeiting the charter of the East Line & Red River Railroad Company. Upon appeal, the judgment of the district court was affirmed by the Supreme Court, and among other things, Chief Justice Stayton said "We further concur with the court below in holding that railways, by reason of such relations with, control or management of other lines than their own, may become, within the meaning of the law, competing lines, though the railways owned by them may not in fact connect."

When viewed with reference to their connections with other lines of railway, I am forced to the conclusion that the lines of the Texas & Gulf Railway and the Gulf, Colorado & Santa Fe, are competing and can not be consolidated by purchase or lease of one to the other without a violation of the Constitution and that this bill is therefore void.

To illustrate: The products of the forest, factories, farms and other traffic originating at Longview, and having destination at Houston or at Galveston, locally or for export, could be taken by the Texas & Pacific Railroad and carried to Dallas and delivered to the Gulf, Colorado & Santa Fe for transportation over that line to either Houston or Galveston, and the Texas & Gulf Railway could take the same shipment in competition with the Texas & Pacific and the Gulf, Colorado & Santa Fe with its connection at Dallas, and said Texas & Gulf Railway could deliver the same to the Houston East & West Texas Railroad at Timponson for delivery at Houston or to its connecting line at Houston for Galveston in the event Galveston was its final destination, or in the event that such shipment was intended to pass through the port of Galveston. What may be said of the shipment orig-

inating at Longview may also be said of a shipment originating on the Texas & Pacific Railway at any point between Dallas and Longview, intended for export through the port of Galveston or having either Houston or Galveston for final destination, and traffic coming through that port from the Atlantic Seaboard or from foreign ports having Longview or any point in North Texas, north of the Texas & Pacific Railway in Texas or beyond, could be transported either over the Gulf, Colorado & Santa Fe and its northern connections or over the Houston East & West Texas and the Texas & Gulf and its northern connections. The competitive features of these lines could be multiplied, and by illustration further emphasized, but this is deemed unnecessary as the Constitution of this State recognizes no degree of competition any more than it recognizes a distinction between good consolidations and bad consolidations. Therefore, if these lines are competitive in any degree, this bill comes within the constitutional inhibition and the same must fall.

And further, a shipment having originated at Timpson with destination at Dallas or any other North Texas point, may be taken by the Houston East & West Texas and delivered to the Gulf, Colorado & Santa Fe Railway at Houston, for delivery at destination, or it may be taken by the Texas & Gulf Railroad and transported over its line of railway to Longview and there delivered to the Texas & Pacific Railway for delivery at destination by its northern connections.

It can be easily seen that the consolidation of the Texas & Gulf Railroad with the Gulf, Colorado & Santa Fe Railway would deprive it and the people served by it of the legitimate protection now afforded them by the connections with the Texas & Pacific Railway at Longview Junction and at Timpson.

Take the city of Carthage to illustrate the situation. Suppose as a matter of course that the Texas & Gulf Railroad could, as proposed by this bill, be connected with the Gulf, Colorado & Santa Fe Railway by being extended from its present terminus at Waterman to a connection with the railway extended from Beaumont to Center, now controlled by the Atchison, Topeka & Santa Fe Railway Company, through its ownership of the Gulf, Colorado & Santa Fe Railway Company, and that this connection is made at the nearest point

which is understood to be about fourteen miles from Waterman, the shipments from Carthage to Houston and Galveston may take one of two competitive routes, viz.: via Timpson and the Houston East & West Texas Railway, or via Longview Junction and the International & Great Northern Railroad. The total distance from Carthage to Houston via the Houston East & West Texas Railway is 185.9 miles, while via Longview Junction and the International & Great Northern Railroad it is 258.6. Now it should be noted that the distance the shipments would have to move via the Gulf, Colorado & Santa Fe Railway from Carthage to Waterman, 35.1 miles from Waterman over the 14 miles proposed to be built by the Gulf, Colorado & Santa Fe Railway, and then from such point to Houston, it would have to travel a distance of 392.8 miles, or a total distance of 442 miles, or the excess over the short line route via Timpson and the Houston East & West Texas Railway of 256.0 and the excess over the route via Longview Junction and the International & Great Northern of 183 miles, and the difference between Carthage and Galveston and the difference between the distance on the Gulf, Colorado & Santa Fe and the International & Great Northern and the Houston East & West Texas are about the same as those to Houston.

No one supposes that competition for this traffic either in rates, handling, prompt delivery, service or accommodations would again exist as applied to business having origin or destination in the town of Carthage, if this bill should become a law. The situation with respect to business between Carthage and other Texas & Gulf Railway points and Dallas, Fort Worth and other Northern Texas points would be even worse, if possible, than would be the situation as applied to South Texas.

Take for instance the traffic moving between Carthage and Dallas. The natural line being by Longview and the Texas & Pacific, a total distance of 161.3 miles, while via the Gulf, Colorado & Santa Fe Railway the entire haul with the proposed connections would be 553 miles between Carthage and Dallas, an excess haul of 394 miles. The extra distance involves much extra time in the movement of freight which is a material factor and of much interest to the shipper.

Who would assume that after the Gulf, Colorado & Santa Fe Railway

Company had effected the destruction of competition in that territory as this consolidation measure would, would accommodate itself to the advantages of the present competitive conditions by surrendering any traffic originating on the proposed line to another line in which it has no interest, for delivery at final destination?

When the people who were prompted by worthy motives in their support of this bill come to know and understand that such measures mean only their undoing, I hazard nothing in saying that such propositions will be without support at their hands.

The Atchison, Topeka & Santa Fe Railway Company owns and controls, in violation of the Constitution of this State, the following railroads in Texas, viz.: The Gulf, Colorado & Santa Fe, the Texas & Gulf Railroad, the Gulf & Interstate Railroad, the Beaumont Wharf & Terminal Company, the Cane Belt Railroad, the Gulf, Beaumont & Great Northern Railway, the Gulf, Beaumont & Kansas City Railway, the Jasper & Eastern Railway, the Pecos & Northern Texas Railway, the Pecos River Railroad, the Rio Grande & El Paso Railroad, and the Southern Kansas Railway of Texas, with a total mileage of 1740.9 miles. Is this flagrant violation of the Constitution, this bold defiance of our organic law acceptable to the people of Texas? Shall we tolerate a system under which a foreign corporate pirate that may consolidate the independent railroad lines of Texas into one vast railroad trust? I believe that no such sentiment finds lodgment in the hearts of patriotic Texans.

If the organic law of this State is to be trampled under foot, if public policies destructive of competition are to be established, if Texas is to have her industrial progress strangled by the iron hand of the railway trust, if our State, her legislation and her governmental and transportation policies are to be dictated by either a foreign or domestic corporate power, I am determined that no one can say that I failed to give the alarm when the danger was at our doors. It has occurred to me that our time might be more profitably employed in the formulation of effective plans for undoing the mischief already done along the lines contemplated by this bill. I am conscious of having done my full duty in this effort to preserve the integ-

riety of the Constitution, and to my objections to this bill I invite your faithful consideration with the full belief that the members of this Legislature will perform their duty as they see it.

T. M. CAMPBELL,
Governor.